

Prepared Statement of the Honorable Pearl E. Casias, Chairman

Tribal Council – Southern Ute Indian Tribe

To the United States Senate Committee on Indian Affairs

Oversight Hearing

“Deficit Reduction and Job Creation: Regulatory Reform in Indian Country”

December 1, 2011

Introduction

Good afternoon Chairman Akaka, Vice Chairman Barrasso, and distinguished members of the Committee on Indian Affairs.

I am Pearl Casias and I am the Chairman of the Tribal Council of the Southern Ute Indian Tribe, located near Ignacio, Colorado. Thank you for the opportunity to appear before you today to discuss legal and regulatory obstacles that are hindering job creation and economic development in tribal communities.

Background on the Southern Ute Indian Tribe

As the Committee knows, in the late 1980s the Southern Ute Indian Tribe (Tribe) embarked on a strategy of taking control of its natural resources for the benefit of our tribal members. In the interim, the Tribe has become a major producer of natural gas in the United States, and along the way has earned “AAA” ratings from national credit rating agencies.

With \$15 trillion in national debt, \$1.2 trillion in annual deficits, and unemployment holding steady at 9%, our nation faces the most serious economic and political challenges since

the 1930s. At the same time, tribal communities have been plagued by jobless rates much higher --- as high as 80% on some reservations --- for generations.

Clearly, bold action is needed to unlock the economic potential of Indian tribes which will provide jobs, income and hope to tribes and their members, as well as to surrounding communities who will also benefit enormously from stronger tribal economies.

In January 2011, President Obama issued an Executive Order on regulatory reform with the stated aim of revisiting existing and future regulations to make sure they pay due regard to their effects on job creation and development.

With this hearing, this Committee is taking the necessary steps to hear from Indian Country about the many obstacles to job creation and stable economies.

Themes and Ideas for Committee Consideration

To create more business-friendly environments in Indian Country, I offer the following items for your review. It is important to note that these are not only applicable to energy-oriented development efforts, and in many cases apply to any development project a tribe might wish to pursue.

1. Indian Energy Bill. Before discussing some of the generally applicable reforms and other ideas, I want to commend the Vice Chairman and the Chairman for their leadership in developing and introducing S.1684, the Indian Tribal Energy Development and Self Determination Act Amendments of 2011. This bill contains very good, pro-development amendments to existing law that the Tribe believes will be helpful in more efficient and effective energy development on tribal lands.

I urge the Committee to schedule a legislative hearing and markup of this important bill before the year is out, with the goal of passing it and sending it to the President before the 112th Congress expires.

2. Leasing Reforms. For development projects that occur on surface lands as well as subsurface lands, the Federal leasing process can be time-consuming, costly and in the end, uneconomic. The Department of the Interior's recent announcement of a proposed regulation to reform and streamline the trust land surface leasing statutes is a very welcome development and we applaud the Secretary for taking the leadership on this issue.

We also laud Vice Chairman Barrasso for introducing the "Helping Expedite and Advance Responsible Tribal Homeownership Act of 2011" (the HEARTH Act, S.703), and the Committee for approving the bill and sending it to the full Senate for its consideration. If enacted, the HEARTH Act will provide tribes with greater autonomy over surface leasing of their trust lands and will help tribal entrepreneurship as well as attract outside investment to tribal economies. We fully support efforts reflected in that legislation that would authorize tribes to enter into surface leases without secretarial approval.

3. Appraisals. Another area in need of this Committee's attention is the appraisal process. For any transaction involving tribal trust land or trust assets, an appraisal is required to be performed to ensure that not less than fair market value is being offered as part of the transaction. Legislative proposals that would provide time limits on the Secretary's consideration of appraisals and estimates of fair market value have been made in recent years. We support those concepts, but believe it important for true appraisal reform to offer tribes the option of developing their own tribal methodologies and processes to make value determinations

and to manage their own appraisal regimes. The substantial delays and inflexible appraisal standards associated with the Federal appraisal requirement must be reformed.

4. NEPA. Mr. Chairman, the Southern Ute Indian Tribe is both a prolific energy producer and a careful steward of our natural environment. As such, we know the value of striking the right balance between development and natural resources protection.

Because so many of the approvals necessary for a development project on tribal lands require the involvement of the Secretary of the Interior or other Federal officials, the National Environmental Policy Act (NEPA) often applies to these decisions. For instance, the act of the Secretary approving a surface lease of tribal trust lands triggers NEPA. Needless to say, this requirement often causes unnecessary delays and, in some cases, can cause viable economic opportunities to be lost to tribes and their members. We believe the Committee should review tribal environmental processes and capacity and investigate ways to make the tribes the primary stewards of environmental protection when it comes to their own lands.

5. Fees for Applications for Permits to Drill. Beginning with the FY2007 Interior Appropriations Act, the Congress authorized the Bureau of Land Management (BLM) to levy and collect a \$6,500 fee for every Application for Permit to Drill on Federal lands. The Department of the Interior interpreted “Federal lands” to include Indian lands, and in the intervening years, the BLM has collected these fees from operators on Indian lands.

These fees, taken together with the impediments mentioned above, provide a significant comparative disadvantage to energy development on Indian lands because these factors do not come into play on privately-owned or state lands.

6. Raising the Comfort Level of Investors and Developers. There are numerous issues the Committee might also wish to investigate that would improve the attractiveness of tribal economies to investors. These include

- a. Providing certainty in the creation and perfection of security interests related to personal and interests in trust property on tribal lands;
- b. Clarifying the power and authority of a §17 Corporation to grant interests in tribal trust property to financial investors; and
- c. Improving the Land Title Records Office tribes must use for purposes of land records or, alternatively, authorizing tribes to use state land recordation offices.

We intend to provide additional detail and rationale for these items for the record.

In conclusion, I want to again thank the Committee for holding this hearing and for its leadership in recognizing that there are many problems that can be addressed without spending money and which, in the end, will have profound effects on the health of tribal economies nationwide.

I would be happy to answer any questions you may have.

Thank you.